

## **REMARKS**

This response after Final Rejection resubmits Claims 1-11 and 14-17. Independent Claim 1, with Claims 2-11 and 14-17 depending therefrom, will remain for consideration.

In the Final Office Action the Examiner rejected Claims 1-5, 10, and 11 under 35 U.S.C. § 103(a) as being unpatentable over Baxter (4,178,924) in view of Silverberg (5,063,919), Kling et al (6,340,782) and Infantino et al (US 2002/0193728); claims 6-9 were held to be unpatentable over South et al (US 2001/0041853) in view of Baxter, Silverberg, Kling et al and Infantino et al; and claims 14-17 were held to be unpatentable over Baxter, Silverberg, Kling et al, Infantino et al, in further view of Baychar (6,981,341).

Applicant will advance arguments hereinbelow to illustrate the manner in which the presently claimed invention is patentably distinguishable from the cited and applied prior art. Reconsideration of the present application is respectfully requested.

Applicant's flexible film, water-resistant sleeve having at least one circular opening is clearly shown in Figs. 1 and 2A. Claim 1 specifically recites the exemplary structure:

*"... a first resilient band attached to the film at the circular opening and disposed so as to encircle the circular opening;*

*a second resilient band attached to the film and disposed adjacent to and at a predetermined distance from the first resilient band, so as to also encircle the circular opening; and*

*an absorbent medium attached to the film, and disposed only between the first and second resilient bands and totally occupying the space between the resilient bands, so as to also encircle the circular opening...."*

In contradistinction to the above noted claimed structure, Baxter discloses a flexible film sleeve possessing a band 40 at the top end of the sleeve (Fig. 1, column 3, lines 30-38) and band of moisture absorbing material 34 located at the top band 40 (Fig. 2, column 3, lines 5-10). **Baxter lacks:** a) the second resilient band attached to the film and disposed adjacent to and at a predetermined distance from the first resilient band; and b) an absorbent medium attached to the film, and disposed only between the first and second resilient bands and totally occupying the space between the resilient bands.

To remedy Baxter's lack of structure, the Examiner begins to reconstruct Baxter's device using impermissible hindsight and illogical reasoning.

First, the Examiner states that Silverberg discloses the use of two bands on a protective sleeve. While that may be true, the Examiner fails to realize that the bands do not form the boundaries of a moisture absorbent medium. Silverberg does not have a moisture absorbent medium.

Second, the Examiner fails to make a cogent argument as to what Baxter would do with a second or third band as disclosed by Silverberg. Contrary to the Examiner's conclusion that Baxter would use a second band, Baxter specifically describes a single seal at 40 (column 3, lines 30-38) and specifically states that the spaced apart moisture absorbing bands 28 and 32 will absorb any moisture (column 3, lines 50-58). Furthermore, the use of a second band would destroy Baxter's attempt to provide flexure between film elements 18 and 20 (column 3, lines 42-49). Finally, the use of a second band would destroy Baxter's

need for permitting air circulation through the interior of tube 18 to dry the absorbent pads 28, 32, and 34 (column 3, lines 53-58).

Third, the Examiner recognizes that Silverberg and Baxter still lack the two bands encircling the sleeve opening and forming the boundary of a moisture absorbent medium therebetween. To remedy this lack of structure, the Examiner relies on two references (Kling and Infantino) that basically disclose elastic bands secured between a layer of moisture absorbent material and intended for use as diapers, sanitary napkins or the like. The Examiner fails to recognize the fact that these devices are intended to keep moisture IN and NOT OUT. Applicant cannot understand what a diaper structure intended to keep moisture confined to the absorbent layer teaches one of ordinary skill in the art of keeping moisture out.

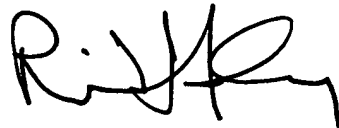
Fourth, claim 1 specifically recites that the absorbent medium is disposed **only between the first and second bands and totally occupies the space between the bands**. The Examiner states that Kling's absorbent layer 103 (Figs. 2 and 3) is between the bands 111 and 112 (true) and totally occupies the space between the bands (not true). Kling's Fig. 2, element ---103 does NOT TOTALLY OCCUPY THE SPACE BETWEEN THE BANDS (note that there is no absorbent material at band location 121).

*Application No.: 10/825,331*  
*Art Unit: 3772*

*Attorney Docket No.: 22406.01*  
*Confirmation No.: 7878*

For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance. If such is not the case, the Examiner is requested to kindly contact the undersigned in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Apley', with a stylized flourish at the end.

Richard J. Apley  
Registration No. 51,316  
(703) 486-1000

RJA: dht